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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/724,538	11/26/2003	Steven S. Conrad	1103APC	1853

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Boyd D. Cox
Suite 506
75 N. East Avenue
P.O. Box 573
Fayetteville, AR 72701

EXAMINER

CAMPBELL, KELLY E

ART UNIT

PAPER NUMBER

3618

DATE MAILED: 10/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

flc

Office Action Summary

Application No.

10/724,538

Applicant(s)

CONRAD

Examiner

Kelly E. Campbell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 28-30 is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 11-14 and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eberlein (DE4202438A).

Eberlein teaches a seating/storage add-on section (25) including a base (silent) having front and rear portions, see Figure 4;

a plurality of wheels (26,27) supporting the base; a seating assembly having leg room for a child (25) mounted on said base, a storage area beneath the seating assembly, and handle (28);

and a shopping cart including a receptacle (14), wheels (11,13), and coupling means (17,18) for releasably holding two wheels of the add-on section (25);

wherein said coupling means comprises a non-rigid connector (17,18) allowing relative movement, see Figure 5;

and wherein said coupling means is an adjustable holster including at least one receptacle.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the shopping cart having a holster receptacle receiving

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the wheels of the add-on, such that the add-on has a holster receptacle for receiving the wheels of the shopping cart, in order to allow a user to apply a greater pushing force on the add-on for driving the shopping cart and minimize the likelihood of the two-vehicles separating, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japiske*, 86 USPQ 70.

Eberlein also teaches an alternate coupling arrangement having two receptacles (18) on opposing sides of the carriage base, for receiving the add-on, see Figure 2, and Eberlein teaches the dual receptacle holsters being an obvious substitute for the single adjustable holster taught in Figure 4.

Claim 5-7,15-17 and 23 are is rejected under 35 U.S.C. 103(a) as being unpatentable over Eberlein (DE4202438A) as applied to claim 1 above, and further in view of McCance(US 3,428,332).

Eberlein does not teach two receptacles including arms and walls.

Chance teaches a first (81) and second (82) receptacle for receiving the wheels of an attached vehicle;

the receptacle has first and second arms (89,90) including a telescoping arm (91);

wherein each of said first and second receptacles are connected by arm (83) and comprise side walls, a bottom wall, and an interior region defined by said side and bottom walls; said bottom wall having first and second generally planar surfaces adjacent to said interior region.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide two receptacles for receiving cart wheels on the invention as taught by Eberlein modified by McCance, such that the receptacles are telescopically adjustable with respect to one another, in order to accommodate carts having a varied wheel-space width, since McCance teaches that the tubular arms of wheel receiving receptacles, can be easily modified to be telescopically adjustable and it has also been held that the provision of adjustability, where needed, involves only routine skill in the art. *In re Stevens*, 101 USPQ 284 (CCPA 1954).

The examiner also notes that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Claims 8-10, 18-20 and 24-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eberlein (DE4202438A) in view of McCance (US 3,428,332) as applied to claim 7 above, and further in view of Vaughn et al (US 5,145,308).

Eberlein modified by McCance does not teach a first and second surfaces disposed at an obtuse angle.

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Vaughn et al teaches a vehicle receptacle having a bottom surface with a first planar surface (54) and second surface (55) disposed at an obtuse angle and the bottom wall is curvilinear, see Figures 4-5.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the receptacles of the cart talk by Eberlein modified by McCance, to include a bottom first and second surface at an obtuse angle with a point, to more securely receive the wheels of the cart in order to prevent the cart and add-on from slipping apart.

Claims 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eberlein (DE4202438A) in view of McCance (US 3,428,332) and Vaughn et al (US 5,145,308) as applied to claim 7 above, and further in view of US McKelvey (US 6,575,480).

McKelvey teaches a shopping cart (2) and add-on (12), wherein the add-on section includes: a brake mechanism (46) comprising a brake pad and foot actuator with locked and unlocked positions, see Column 6; a base (15) including a frame and platform (43) mounted on the frame at the front portion of the base, and storage area (13) at the rear of the base frame;

a seating assembly including seat support (48), seating portion (56) and handle (20); legroom area disposed above the platform between the seat base and connection assembly (14).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the shopping cart taught by Eberlein, McCance, and Vaughn, to include the add-on section as described by McKelvey in order to provide a comfortable attachment-seating arrangement for a larger child or disabled person to be safely pushed, maneuvered and stopped along with the shopping cart.

Response to Arguments

Applicant's arguments filed 7/18/2005 have been fully considered but they are not persuasive.

With regards to applicant's arguments that "modifying Eberlein does not constitute rearranging parts of an invention", but instead constitutes taking parts from one device and adding those parts to another device; the Examiner contends that the stroller and shopping cart invention taught by Eberlein are a functioning unit, thus it would in fact be obvious to modify the rearrange parts of the "unit". It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the shopping cart having a holster receptacle receiving the wheels of the add-on, such that the add-on has a holster receptacle for receiving the wheels of the shopping cart instead, in order to allow a user to apply a greater pushing force on the add-on for driving the shopping cart without dislodging the add-on from the shopping cart and minimize the likelihood of the two-vehicles separating, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japiske*, 86

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USPQ 70. A user pushing the add-on of the Eberlein invention would easily dislodge the add-on from the cart with a firm shove, whereas by rearranging the holster position from the cart, to the add-on and instead receiving the cart to the add-on, the user can push the combination with vigor and not dislodge the two devices. A conclusion of obviousness may be made from common knowledge and common sense of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference (see *In re Bozek*, 416 F.2d 1385, 1390, 163 USPQ 545, 549 (CCPA 1969)), with skill being presumed on the part of the artisan, rather than the lack thereof (see *In re Sovish* 769 F.2d 738, 742, 226 USPQ 771, 774 (Fed. Cir. 1985))

This motivation does not substantiate the inventiveness of the applicant's design, but instead clearly exposes the applicant's obvious modification of the existing Eberlein design, for optimal use.

With regards to applicant's arguments that the connector between the combined unit of Eberlein functions "differently" than the non-rigid connector between the combined unit of applicant's invention; the invention of Eberlein clearly performs equivalent functions to applicant's invention as recited in the claims, particularly claim 1. Applicant has not recited limitations distinguishing his invention from the prior art, nor is the term "differently" clearly explained in applicant's arguments.

With regards to applicant's arguments that there is nothing in the teaching of Eberlein to suggest that the coupling of Eberlein, as recited in claims 3,12 and 22 is adjustable; however, Figures 5-6 of Eberlein clearly disclose a holster that is adjustable

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from a stowed upward position to a lowered "use" position. Applicant has not clearly recited a specific manner in which his invention is "adjustable".

With regards to applicant's arguments that the McCance reference is used to hold a vehicle being pulled and thus is used for a different purpose than the applicant's invention, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

With regards to applicant's arguments that Vaughn does not teach a first and second planar surface, Vaughn does teach a first planar surface (54) and second (55). Planar surface (54) is not planar in its entirety, but has a planar bottom section connecting with planar surface (55). Applicant has not specified that both surfaces be planar in their entirety.

With regards to applicant's arguments, should be certain that the features upon which applicant relies are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

As regards reading unclaimed limitations from the specification into the claims

From MPEP 2111:

During patent examination, the pending claims must be given their broadest reasonable interpretation consistent with the specification. *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). Applicant always has the opportunity to

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amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969) The court explained that "reading a claim in light of the specification, to thereby interpret limitations explicitly recited in the claim, is a quite different thing from 'reading limitations of the specification into a claim,' to thereby narrow the scope of the claim by implicitly adding disclosed limitations which have no express basis in the claim." The court found that applicant was advocating the latter, i.e., the impermissible importation of subject matter from the specification into the claim.). See also In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997).

Allowable Subject Matter

Claims 28-30 allowed.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly E. Campbell whose telephone number is (571) 272-6693. The examiner can normally be reached on 9:00-5:30 Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis can be reached on (571) 272-6914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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KEC

[Signature] *[Signature]*

CHRISTOPHER P. ELLIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600